

No. 21,860

---

**In the United States Court of Appeals  
for the Ninth Circuit**

---

**NATIONAL LABOR RELATIONS BOARD, PETITIONER**

*v.*

**BLADE-TRIBUNE PUBLISHING COMPANY, RESPONDENT  
SAN DIEGO TYPOGRAPHIC UNION, LOCAL 221, INTER-  
NATIONAL TYPOGRAPHICAL UNION, AFL-CIO,  
INTERVENOR**

---

**On Petition for Enforcement of an Order of the  
National Labor Relations Board**

---

**BRIEF FOR THE NATIONAL LABOR RELATIONS  
BOARD**

---

**ARNOLD ORDMAN,**  
*General Counsel,*

**DOMINICK L. MANOLI,**  
*Associate General Counsel,*

**MARCEL MALLET-PREVOST,**  
*Assistant General Counsel,*

**ELLIOTT MOORE,  
BURTON L. RAIMI,**  
*Attorneys,  
National Labor Relations Board.*

**FILED**

SEP 18 1967

WM. B. LUCK, CLERK



## E X

|   | Page |
|---|------|
| Jurisdiction .....  | 1    |
| Statement of the case .....   | 2    |
| I. The Board's findings of fact .....   | 2    |
| A. The organizing campaign .....  | 3    |
| B. The Company refuses to recognize the Union..   | 4    |
| C. The Company's unlawful activities .....  | 5    |
| D. The election .....   | 10   |
| II. The Board's conclusion and order .....  | 10   |
| Argument .....  | 11   |
| I. Substantial evidence on the record as a whole<br>supports the Board's finding that the Company<br>violated Section 8(a) (1) of the Act by interro-<br>gating employees about their union sympathies<br>and by unfavorably changing the working hours<br>of employee Agneta ..... | 11   |
| A. The interrogations in Braden's office .....  | 11   |
| B. Interference, restraint and coercion during<br>the luncheon campaign .....   | 16   |
| C. The discriminatory change in Agneta's hours<br>of employment .....   | 17   |
| II. Substantial evidence on the record as a whole<br>supports the Board's finding that the Company<br>violated Section 8(a) (5) and (1) of the Act by<br>refusing to recognize and bargain with the<br>Union .....  | 23   |
| A. The Union's majority status .....  | 24   |
| B. The alleged good-faith doubt .....   | 33   |
| C. The Board properly issued a bargaining<br>order .....  | 35   |
| Conclusion .....  | 39   |
| Certificate .....   | 39   |

|                  | Page |
|------------------|------|
| Appendix A ..... | 40   |
| Appendix B ..... | 41   |
| Appendix C ..... | 44   |

## AUTHORITIES CITED

### Cases:

|  |        |
|--|--------|
| <i>Amalgamated Clothing Workers (Edro Corp.) v. N.L.R.B.</i> , 345 F. 2d 264 (C.A. 2) .....                | 36     |
| <i>Amalgamated Clothing Workers (Hamburg Shirt) v. N.L.R.B.</i> , 371 F. 2d 740 (C.A.D.C.) .....           | 25     |
| <i>American Boiler Mfrs. Ass'n v. N.L.R.B.</i> , 366 F. 2d 815 (C.A. 8) .....                              | 22     |
| <i>American Newspaper Pub. Ass'n v. N.L.R.B.</i> , 193 F. 2d 782 (C.A. 7), cert. denied, 344 U.S. 812 .... | 23     |
| <i>Blue Flash Express Co.</i> , 109 NLRB 591 .....   | 12     |
| <i>Bon Hennings Logging Co. v. N.L.R.B.</i> , 308 F. 2d 548 (C.A. 9) .....                                 | 16     |
| <i>Borden Cabinet Corp. v. N.L.R.B.</i> , 375 F. 2d 891 (C.A. 7) .....                                     | 36     |
| <i>Bourne v. N.L.R.B.</i> , 332 F. 2d 47 (C.A. 2) .....  | 12, 15 |
| <i>Cameo Lingerie, Inc.</i> , 148 NLRB 535 .....   | 14     |
| <i>Clermont's, Inc.</i> , 154 NLRB 1397 .....  | 37     |
| <i>Colson Corp. v. N.L.R.B.</i> , 347 F. 2d 128 (C.A. 8), cert. denied, 382 U.S. 904 .....                 | 24, 31 |
| <i>Curtiss-Wright Corp. v. N.L.R.B.</i> , 347 F. 2d 61 (C.A. 3) .....                                      | 23     |
| <i>Cusano v. N.L.R.B.</i> , 190 F. 2d 898 (C.A. 3) .....   | 20, 21 |
| <i>Daniel Constr. Co. v. N.L.R.B.</i> , 341 F. 2d 805 (C.A. 4), cert. denied, 382 U.S. 831 .....           | 12     |
| <i>Editorial "El Imparcial," Inc. v. N.L.R.B.</i> , 278 F. 2d 184 (C.A. 1) .....                           | 38     |
| <i>Ely &amp; Walker</i> , 151 NLRB 636 .....   | 29     |
| <i>Fibreboard Corp. v. N.L.R.B.</i> , 379 U.S. 203 .....   | 37     |
| <i>Florence Printing Co. v. N.L.R.B.</i> , 333 F. 2d 289 (C.A. 4) .....                                    | 24, 35 |
| <i>Furr's, Inc. v. N.L.R.B.</i> , — F. 2d — (C.A. 10, No. 8686, dec. Feb. 20, 1967), 64 LRRM 2422 ....     | 36     |
| <i>Garden Island Publishing Co.</i> , 154 NLRB 697 .....   | 34     |

| Cases—Continued  | Page       |
|--|------------|
| <i>General Electric Co.</i> , 143 NLRB 926 .....   | 13         |
| <i>Grand Union Co.</i> , 122 NLRB 589 .....  | 26         |
| <i>Greystone Knitwear Corp.</i> , 136 NLRB 573, enf'd,<br>per curiam, 311 F. 2d 794 (C.A. 2) .....   | 31         |
| <i>Harvard Coated Prods., Inc.</i> , 156 NLRB 162 .....  | 37         |
| <i>Holmes, D.H. v. N.L.R.B.</i> , 179 F. 2d 876 (C.A. 5) ..  | 38         |
| <i>Int'l Union of Electrical, Radio &amp; Mach. Wkrs.</i><br>( <i>S.N.C. Mfg. Co.</i> ) v. <i>N.L.R.B.</i> , 352 F. 2d 361<br>(C.A.D.C.), cert. denied, 382 U.S. 902 ..... | 29         |
| <i>Int'l Union of Operating Engineers, Local 49</i> , 353<br>F. 2d 852 (C.A.D.C.) .....  | 12         |
| <i>Irving Air Chute v. N.L.R.B.</i> , 350 F. 2d 176 (C.A.<br>2) .....  | 18, 24, 36 |
| <i>Joy Silk Mills v. N.L.R.B.</i> , 185 F. 2d 732 (C.A.<br>D.C.), cert. denied, 341 U.S. 914 .....   | 30, 35     |
| <i>Knickerbocker Plastics Co.</i> , 104 NLRB 514, enf'd<br>218 F. 2d 917 (C.A. 9) .....  | 25-26      |
| <i>Lebanon Steel Foundry Co. v. N.L.R.B.</i> , 130 F. 2d<br>404 (C.A.D.C.), cert. denied, 317 U.S. 659 .....   | 25         |
| <i>Local 152, I.B.T. v. N.L.R.B.</i> , 343 F. 2d 307 (C.A.<br>D.C.) .....  | 38         |
| <i>Luckenbach Steamship Co.</i> , 12 NLRB 1333 .....   | 10         |
| <i>Master Transmission Rebuilding Corp. v. N.L.R.B.</i> ,<br>373 F. 2d 402 (C.A. 9) .....  | 35         |
| <i>N.L.R.B. v. Ace Comb Co.</i> , 342 F. 2d 841 (C.A.<br>8) .....  | 29         |
| <i>N.L.R.B. v. Wm. J. Burns Det. Agency, Inc.</i> , 346<br>F. 2d 897 (C.A. 8) .....  | 20, 23     |
| <i>N.L.R.B. v. Caldarera</i> , 209 F. 2d 265 (C.A. 8) .....  | 38         |
| <i>N.L.R.B. v. California Compress Co.</i> , 274 F. 2d<br>104 (C.A. 9) .....   | 12         |
| <i>N.L.R.B. v. Camco, Inc.</i> , 340 F. 2d 803 (C.A. 5),<br>cert. denied, 382 U.S. 926 .....   | 12, 15     |
| <i>N.L.R.B. v. Dant &amp; Russell</i> , 207 F. 2d 165 (C.A.<br>9) .....  | 19         |
| <i>N.L.R.B. v. Delight Bakery, Inc.</i> , 353 F. 2d 344<br>(C.A. 6) .....  | 37-38      |
| <i>N.L.R.B. v. Economy Food Center, Inc.</i> , 333 F. 2d<br>468 (C.A. 7) .....   | 24         |

IV

Cases—Continued

|   | Page   |
|---|--------|
| <i>N.L.R.B. v. Electric Furnace Co.</i> , 327 F. 2d 373 (C.A. 6) .....  | 20     |
| <i>N.L.R.B. v. Essex Wire Corp.</i> , 245 F. 2d 589 (C.A. 9) .....  | 12     |
| <i>N.L.R.B. v. Exchange Parts Co.</i> , 375 U.S. 405 .....  | 16     |
| <i>N.L.R.B. v. Fant Milling Co.</i> , 360 U.S. 301 .....  | 21     |
| <i>N.L.R.B. v. Ferguson</i> , 257 F. 2d 88 (C.A. 5) .....   | 18     |
| <i>N.L.R.B. v. Firedoor Corp. of America</i> , 291 F. 2d 328 (C.A. 2), cert. denied, 368 U.S. 921 .....               | 15-16  |
| <i>N.L.R.B. v. Gaynor News Co.</i> , 197 F. 2d 719 (C.A. 2) .....   | 20     |
| <i>N.L.R.B. v. General Tube Co.</i> , 141 NLRB 441, enf'd, 331 F. 2d 751 (C.A. 6) .....                               | 29     |
| <i>N.L.R.B. v. Globe Prods. Corp.</i> , 322 F. 2d 694 (C.A. 4) .....  | 18     |
| <i>N.L.R.B. v. Greenfield Components Corp.</i> , 317 F. 2d 85 (C.A. 1) .....  | 28     |
| <i>N.L.R.B. v. Hamilton Co.</i> , 220 F. 2d 492 (C.A. 10) ..  | 38     |
| <i>N.L.R.B. v. Hyde</i> , 339 F. 2d 568 (C.A. 9) .....  | 24, 31 |
| <i>N.L.R.B. v. Int'l Union, Progressive Mine Wkrs.</i> , 375 U.S. 396, rev., per curiam, 319 F. 2d 428 (C.A. 7) ..... | 38     |
| <i>N.L.R.B. v. Keystone Floors, Inc.</i> , 306 F. 2d 560 (C.A. 3) .....   | 34     |
| <i>N.L.R.B. v. Kiekhoefer Corp.</i> , 292 F. 2d 130 (C.A. 7), cert. denied, 362 U.S. 950 .....                        | 20, 23 |
| <i>N.L.R.B. v. Lexington Chair Co.</i> , 361 F. 2d 283 (C.A. 4) .....   | 12     |
| <i>N.L.R.B. v. R.J. Lison Co., Inc.</i> , — F. 2d —, 65 LRRM 2928 (C.A. 9, No. 20,879, dec. June 26, 1967) .....      | 29     |
| <i>N.L.R.B. v. Local 169, Teamsters</i> , 228 F. 2d 425 (C.A. 3) .....  | 20     |
| <i>N.L.R.B. v. M &amp; B Headwear Co.</i> , 349 F. 2d 170 (C.A. 4) .....  | 15     |
| <i>N.L.R.B. v. McCormick Concrete Co. of S.C., Inc.</i> , 371 F. 2d 149 (C.A. 4) .....                                | 12     |
| <i>N.L.R.B. v. Mackay Radio &amp; Tele. Co.</i> , 304 U.S. 333 .....  | 22-23  |

| Cases—Continued   | Page   |
|---|--------|
| <i>N.L.R.B. v. Moore's Seafood Prods., Inc.</i> , 369 F. 2d 488 (C.A. 7) .....  | 36     |
| <i>N.L.R.B. v. R.H. Osbrink</i> , 218 F. 2d 341 (C.A. 9), cert. denied, 349 U.S. 928 .....                              | 20, 21 |
| <i>N.L.R.B. v. Palette Stone Corp.</i> , 283 F. 2d 641 (C.A. 2) .....   | 20     |
| <i>N.L.R.B. v. Raymond Pearson, Inc.</i> , 243 F. 2d 456 (C.A. 5) .....   | 20     |
| <i>N.L.R.B. v. Primrose Super Market of Salem, Inc.</i> , 353 F. 2d 675 (C.A. 1), cert. denied, 382 U.S. 830 .....      | 35     |
| <i>N.L.R.B. v. Puerto Rico Rayon Mills, Inc.</i> , 293 F. 2d 941 (C.A. 1) .....   | 23     |
| <i>N.L.R.B. v. Roure-Dupont Mfg. Co.</i> , 199 F. 2d 631 (C.A. 2) .....   | 23     |
| <i>N.L.R.B. v. Security Plating Co., Inc.</i> , 356 F. 2d 725 (C.A. 9) .....  | 24, 25 |
| <i>N.L.R.B. v. Silver Bakery, Inc.</i> , 351 F. 2d 37 (C.A. 1) .....  | 20     |
| <i>N.L.R.B. v. Southbridge Sheet Metal Works</i> , — F. 2d — (C.A. 1, No. 6875, dec. July 17, 1967, 65 LRRM 2916) ..... | 36     |
| <i>N.L.R.B. v. Stow Mfg. Co.</i> , 217 F. 2d 900 (C.A. 2), cert. denied, 348 U.S. 964 .....                             | 36     |
| <i>N.L.R.B. v. Syracuse Color Press</i> , 209 F. 2d 596 (C.A. 2), cert. denied, 347 U.S. 966 .....                      | 12     |
| <i>N.L.R.B. v. U.S. Divers Co.</i> , 308 F. 2d 899 (C.A. 9) .....   | 16     |
| <i>N.L.R.B. v. Frank C. Varney Co.</i> , 359 F. 2d 774 (C.A. 3) .....   | 36     |
| <i>N.L.R.B. v. Victory Plating</i> , 325 F. 2d 92 (C.A. 9) ..   | 16     |
| <i>N.L.R.B. v. West Coast Casket Co.</i> , 205 F. 2d 902 (C.A. 9) .....   | 12     |
| <i>National Licorice Co. v. N.L.R.B.</i> , 309 U.S. 350 ....  | 21     |
| <i>Northern Virginia Steel Corp. v. N.L.R.B.</i> , 300 F. 2d 168 (C.A. 4) .....   | 35     |
| <i>P &amp; M Parking System</i> , 139 NLRB 987 .....  | 13     |
| <i>Personal Products Corp.</i> , 114 NLRB 959 .....   | 29     |
| <i>Phelps-Dodge Corp. v. N.L.R.B.</i> , 313 U.S. 177 .....  | 37     |

# VI

## Cases—Continued

Page

|  |            |
|--|------------|
| <i>Piasecki Aircraft Corp. v. N.L.R.B.</i> , 280 F. 2d 575<br>(C.A. 3), cert. denied, 364 U.S. 933 .....                                     | 31         |
| <i>Radio Officers' Union v. N.L.R.B.</i> , 347 U.S. 17 .....   | 36         |
| <i>Retail Clerks Union, Local 1179 (John P. Serpa, Inc.) v. N.L.R.B.</i> , 376 F. 2d 186 (C.A. 9) .....                                      | 35         |
| <i>Safeway Stores, Inc.</i> , 99 NLRB 48 .....   | 26         |
| <i>Sakrete Of Northern Calif., Inc. v. N.L.R.B.</i> , 332 F. 2d 902 (C.A. 9), cert. denied, 379 U.S. 961, rehearing den., 380 U.S. 926 ..... | 24, 34     |
| <i>Siegel, Henry I. Co., Inc.</i> , 143 NLRB 386 .....   | 13         |
| <i>Strucknes Construction Co.</i> , 165 NLRB No. 102, 65 LRRM 1385 .....   | 13         |
| <i>Strydel, Inc.</i> , 156 NLRB 1185 .....   | 37         |
| <i>Summit Mining Corp. v. N.L.R.B.</i> , 260 F. 2d 894 (C.A. 3) .....  | 38         |
| <i>Surpass Leather Co.</i> , 21 NLRB 1258 .....  | 25         |
| <i>Texas Industries, Inc. v. N.L.R.B.</i> , 336 F. 2d 128 (C.A. 5) .....   | 20         |
| <i>United Aircraft Corp. v. N.L.R.B.</i> , 333 F. 2d 819 (C.A. 2), cert. denied, 380 U.S. 910 .....  | 34-35      |
| <i>United Mine Wkrs. v. Arkansas Oak Flooring Co.</i> , 351 U.S. 62 .....  | 23         |
| <i>United Steelworkers of America v. N.L.R.B.</i> , 377 F. 2d 140 (C.A.D.C.) .....   | 38         |
| <i>Wausau Steel Corp. v. N.L.R.B.</i> , 377 F. 2d 369 (C.A. 7) .....   | 36, 37, 38 |
| <i>Western Cartridge Co. v. N.L.R.B.</i> , 134 F. 2d 240 (C.A. 7), cert. denied, 320 U.S. 746 .....  | 14         |
| <i>Worzella Publishing Co.</i> , 121 NLRB 78 .....   | 34         |

## Statutes:

|   |           |
|---|-----------|
| National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, <i>et seq.</i> ) ..... | 1         |
| Section 7 .....   | 11        |
| Section 8(a) (1) .....  | 2, 11, 23 |
| Section 8(a) (3) .....  | 19        |
| Section 8(a) (5) .....  | 2, 23     |

## VII

| Statutes—Continued      | Page |
|-------------------------|------|
| Section 9 (a) .....     | 23   |
| Section 9 (c) (1) ..... | 23   |
| Section 10 (b) .....    | 19   |
| Section 10 (e) .....    | 1    |

### Miscellaneous :

|  |    |
|--|----|
| Bok, <i>The Regulation of Campaign Tactics in Representation Elections under the NLRA</i> , 78 Harv. L. Rev. 38, 106-112, Nov. 1964 .....          | 12 |
| Seng, <i>Employer May Violate Section 8(a)(1) in Attempting to Ascertain Union Majority Status</i> , 41 Notre Dame L. Rev. No. 4 (Apr. 1966) ..... | 12 |



**In the United States Court of Appeals  
for the Ninth Circuit**

---

No. 21,860

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

BLADE-TRIBUNE PUBLISHING COMPANY, RESPONDENT  
SAN DIEGO TYPOGRAPHIC UNION, LOCAL 221, INTER-  
NATIONAL TYPOGRAPHICAL UNION, AFL-CIO,  
INTERVENOR

---

**On Petition for Enforcement of an Order of the  
National Labor Relations Board**

---

**BRIEF FOR THE NATIONAL LABOR RELATIONS  
BOARD**

---

**JURISDICTION**

This case is before the Court on petition of the National Labor Relations Board pursuant to Section 10 (e) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, *et seq.*),<sup>1</sup> for enforcement of its order (R. 32-33, 80)<sup>2</sup>

---

<sup>1</sup> The pertinent statutory provisions are reprinted in Appendix B., *infra*, pp. 41-43.

<sup>2</sup> References designated "R." are to Volume I of the Record as reproduced pursuant to Rule 10 of this Court. Refer-

against Blade-Tribune Publishing Company, issued December 6, 1966, and reported at 161 NLRB No. 137. This Court has jurisdiction of the proceeding, the unfair labor practices having occurred in Ocean-side, California, where the Company is engaged in the publication of a daily newspaper. No jurisdictional questions are presented.

## STATEMENT OF THE CASE

### I. The Board's Findings of Fact

Briefly, the Board found that the Company violated Section 8(a)(1) of the Act by interrogating its employees about their union activities, by promising wage increases to discourage union activities, and by changing the working hours of employee Agneta in order to discourage his union activities and those of the other employees. The Board also found that the Union<sup>3</sup> represented a majority of the Company's employees in an appropriate unit when it demanded bargaining, and that the Company violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union in order to gain time in which to undermine the Union's majority status. The facts are these:

---

ences designated "Tr." are to the reporter's transcript of the testimony as reproduced in Volume II of the Record. References designated "GC Exh.," or "R Exh." are to exhibits of the General Counsel and Respondent respectively.

<sup>3</sup> San Diego Typographical Union, Local 221, International Typographical Union, AFL-CIO.

### *A. The organizing campaign*

The Company, which publishes a daily newspaper in Oceanside, California, employs 22 full-time employees, excluding Foreman Wells, in its mechanical department (R. 20; G.C. Exh. 8). The Union began organizing these employees in July 1963 (R. 21; Tr. 87-88, 93-96). At that time it received an application for membership from Jocheim (G.C. Exh. 17), and in February 1964 it received applications from Bowman (G.C. Exh. 14) and Metzger (G.C. Exh. 16). Then, in March 1964, it ceased its organizing activity and filed unfair labor practice charges against the Company alleging violations of Section 8 (a)(1) and (3) of the Act (Board Case No. 21-CA-5854). In June 1964, a settlement agreement was executed pursuant to which the Company posted the usual notices, although by the terms of the agreement, it did not admit violating the Act (R. 23-24; Tr. 243-244). Thereafter, the Union resumed its organizing campaign and obtained applications from seven more employees.<sup>4</sup> Four other employees<sup>5</sup> were already dues-paying members of the Union (R. 21; Tr. 87-88, 93-96). The Union thus represented 13 of the 22 employees in the unit and on January 15,

---

<sup>4</sup> In October 1964 Agneta signed an application (G.C. Exh. 15) and in January 1965 Harrington (G.C. Exh. 9), Kopp (G.C. Exh. 10), David Wanner (G.C. Exh. 11), and Eugenia (Smith) Wanner (G.C. Exh. 12) signed applications. Another employee, Bleau, also signed an application. However, because he was a casual employee he was not included in the unit (R. 20).

<sup>5</sup> Moses, Craig, Thompson, and Casebolt.

1965, it demanded recognition as their bargaining agent (R. 13-14; Tr. 228).<sup>6</sup>

*B. The Company refuses to recognize the Union*

Company President Thomas Braden was out of town when the Union's telegram arrived. Immediately upon his return, however, he called a meeting of some of the mechanical department employees. He read the Union's telegram to them and told them he was opposed to the Union. Among other things, he told them that, "he hated to see [the Union] come into the shop," (R. 14; Tr. 43), and that he felt that [the Company] was a family, and everybody was happy . . . and that we didn't need a union in the shop" (R. 14; Tr. 154), that "he felt the Blade-Tribune would be better off without the Union" (R. 14; Tr. 190-191), that "he could run the shop better the way he had been running it for years with the close-knit family of people, and that everybody would progress along with the paper, which is progressive" (Tr. 154), and that "it's up to you people, but I am against it. At this time I can't afford it" (R. 14; Tr. 269). Then, after consulting with his attorney (Tr. 324-325), Braden wrote the Union on January 20 refusing recognition, assertedly because he doubted that it repre-

---

<sup>6</sup> In its telegram requesting recognition, the Union described the unit as covering: "all mechanical operations from the receipt of the copy by the composing room employees to the finished product that comes off the printing press. All journeymen and apprentice employees performing composing room, press and stereotype operations are included in the collective-bargaining group . . ." (R. 14; Tr. 11-12).

sented a majority in an appropriate unit. In his letter Braden suggested that the Union seek a Board-conducted election (R. 14-15; Tr. 12; G.C. Exh. 2).

### *C. The Company's unlawful activities*

During the 10 days following his rejection of the Union's bargaining request, Braden systematically interrogated 13 of the mechanical department employees about their union sympathies (R. 15; Tr. 32, 34, 325). Each of these employees was summoned individually to Braden's office. Braden first told the employee he did not have to answer the questions and that no reprisals would be taken because of his answer, then asked each one whether he wanted to be represented by the Union (R. 15; Tr. 325-326). In addition, he engaged several employees in more extensive discussions regarding the Union and their reasons for joining. Thus, employee Bowman told Braden that he wanted a raise, to which Braden replied, "I can't give you a raise because of the Union. I will see what I can do" (R. 15; Tr. 44). Two weeks later, Bowman received an increase of 20 cents an hour (R. 15; Tr. 45).<sup>7</sup> When Braden asked employee Harrington whether he signed a card, Harrington told him he had not, although Harrington had in fact signed an application for membership on January 14 (R. 15; Tr. 57; G.C. Exh. 9). Braden then volunteered that "he didn't particularly think the

---

<sup>7</sup> Braden testified that Bowman's raise conformed to a company policy of semi-annual pay raises (Tr. 334). However, Bowman testified that in the past he received only 10-cent pay raises (Tr. 47-48).

Blade-Tribune needed the Union at the time, but maybe within five or ten years it might need it" (Tr. 58). Braden also reminded Harrington that it was almost time for a raise and when Harrington replied that he "heard that since the Union is trying to get in we won't be getting any raises until it is settled" (R. 15; Tr. 64-5), Braden rejoined, "That's the idea" (R. 15; Tr. 64-5). Nonetheless, Harrington received a 15-cents an hour raise shortly before the election (R. 15; Tr. 58). Braden asked employee Verle Messinger how he felt about the Union and repeated his assertion that his plant ought to be run the way he saw fit. Messinger told Braden that he had not yet made up his mind (R. 15; Tr. 125-127).

Employee Agneta was asked whether he was happy working at the Blade-Tribune, whether he was concerned about wages, and whether he had signed anything for the Union. To the latter question, Agneta replied in the negative even though he too had signed an application for membership. After determining that Agneta was not concerned about wages (Tr. 156), Braden asked him "What was the purpose, what was the need." Agneta replied that he was concerned about job security since he had twice been fired from the Blade-Tribune (R. 15), once for asking for a raise (Tr. 160) and a second time because the Company was replacing him with a friend of Braden's (Tr. 161). Agneta's conversation with Braden lasted about an hour (Tr. 158) and from its course, Braden correctly assumed that Agneta had joined the Union (Tr. 331, 188). When employee David Wanner was interrogated, he told Braden that

he was in favor of the Union (Tr. 192) and also that he had signed because he was planning to go to Alaska where he understood that all the printing shops were unionized. Braden responded by asking Wanner “why would [he] kick him [Braden] in the teeth . . . just before [he] left” (R. 16; Tr. 192). In the case of Eugenia Wanner, Braden first lectured her on the pros and cons of organization and then asked if she had signed anything for the Union. Although she had already signed an application (G.C. Exh. 12), she responded, “I didn’t—I was innocent” (R. 16; Tr. 210).<sup>8</sup>

Following Braden’s interrogations of the employees, the Union and the Company exchanged another series of letters. On February 4, 1965, the Union again requested bargaining and offered to submit to a card check (R. 16; G.C. Exh. 3). On February 11, Company counsel sent a letter to the Union’s counsel, stating that the Company “genuinely doubts” the Union’s majority status and that the unit of all mechanical employees was inappropriate, and suggested that the Union seek a Board-conducted representation election (R. 16-17; G.C. Exh. 4). In early March the Union again offered to submit to a card check among the employees in “the traditional composing room unit” (R. 17; G.C. Exh. 5). The Company answered on March 15, again stating that it doubted the Union’s majority and the validity of its authorization

---

<sup>8</sup> Other employees who testified to being interviewed by Braden were Richard Hareld (Tr. 217), Aialaisa Salani (Tr. 269), and Keith Neal (Tr. 261).

cards, and suggesting that an election be held (R. 17-18; G.C. Exh. 6).

About a week later, the Company filed an election petition in which it described the unit as "All production and maintenance employees employed in the composing room department. . . ." In early April the Union and the Company entered into an Agreement for a Consent Election. The unit described in the Agreement was the same as that originally suggested by the Union (R. 18; Tr. 17) :

All employees employed in the composing room department and the press stereotype department including craft foremen; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

During the time between entering into this agreement and the election, Braden continued his campaign against the Union by taking most of the mechanical department employees to lunch. During these luncheons, Braden questioned the employees about their feelings toward the Union (R. 18; Tr. 194, 219-220, 271-272). With some he also discussed their personal and financial problems (R. 18; Tr. 36, 37, 46). With Bowman, Braden again discussed a pay raise (R. 18; Tr. 49), and during his luncheon with David Wanner and Metzger, Braden told them that in the near future he thought it would be possible to establish a pension plan equal to the Union's (R. 18; Tr. 194-195).

Shortly before the election, the Company posted a new work schedule which changed Agneta's hours so

as to require him to “double back”—that is, to work the 3:00 p.m. to 11:00 p.m. shift on Thursdays and then to return to his regular 7:00 a.m. to 3:00 p.m. shift on Friday mornings, after 8 hours off (R. 18-19; Tr. 165-166). Agneta was the only employee required to “double back” under the new schedule and in the past no employee had been required to work such hours (R. 19; Tr. 166, 143).<sup>9</sup>

Prior to posting the new work schedule, Foreman Wells told employee Verle Messinger that “as soon as the election was over with . . . he was going to get rid of Agneta” (R. 19; Tr. 129-130). He also showed Messinger the new work schedule and told him that, “he was sure Agneta wouldn’t stay there after he saw the schedule” (Tr. 129-130; R. 19). Meanwhile, Agneta heard about the work schedule from other employees and spoke to Wells about it (R. 19; Tr. 167). Wells told him that if he did not want to work the new schedule, he would be replaced (R. 19; Tr. 167). Wells also refused to let Agneta see President Braden about the schedule, telling him that Braden had already approved it (R. 19; Tr. 167). Agneta tried to work the new schedule, but found that the doubling back made him drowsy and increased the inherent dangers of his job—cutting cast metal with a power saw (R. 19; Tr. 165, 172). Then, assuming, as Wells had told him, that he would be replaced if he did not work the new schedule, Agneta stopped reporting for work (R. 19; Tr. 172).

---

<sup>9</sup> Agneta was one of the few employees not taken to lunch by Braden (Tr. 177).

### **D. The election**

The election was held on May 5, and resulted in a vote of 15 against the Union, 8 in favor of the Union, and 4 challenged ballots.<sup>10</sup> Thereafter, the Union filed timely objections to conduct affecting the results of the election. The Regional Director sustained one of the objections and set the election aside. The Union then filed the 8(a)(1) and (5) charges giving rise to this proceeding (R. 18).

### **II. The Board's Conclusion and Order**

On the above facts, the Board found that the Company violated Section 8(a)(1) of the Act by Braden's interrogation of the employees to determine their union sympathies (R. 18, 19), by his promising of pay increases (R. 18, 19), and by the adverse change in Agneta's hours of employment (R. 20). The Board further found that the Union represented a majority of the Company's employees in an appropriate unit (R. 15) and that the unfair labor practices, beginning as they did immediately after receipt of the Union's bargaining demand, demonstrated that the Company's refusal to bargain was in bad faith, in violation of Section 8(a)(5) of the Act (R. 20-21).

The Board's order requires the Company to cease and desist from the unfair labor practices found, and from interfering with, restraining, or coercing its

---

<sup>10</sup> The challenges were not sufficient in number to affect the results of the election and therefore were not resolved by the Regional Director.

employees in any like or related manner in the exercise of their Section 7 rights. Affirmatively, the Board ordered the Company to bargain with the Union and to post the appropriate notices (R. 21-22).

## ARGUMENT

### I. Substantial Evidence on the Record as a Whole Supports the Board's Finding That the Company Violated Section 8(a)(1) of the Act by Interrogating Employees About Their Union Sympathies and by Unfavorably Changing the Working Hours of Employee Agneta

#### A. *The interrogations in Braden's office*

As detailed in the Statement, *supra*, pp. 4-5, Braden first refused the Union's demand for recognition and then interrogated 13 of the employees to determine their union sympathies. The Board found that the interviews violated Section 8(a)(1) of the Act because of the circumstances under which they were conducted. Thus, in determining whether a poll of employees is violative of the Act, the Board must balance the employer's interest in determining whether a union demanding recognition does, in fact, represent a majority of his employees against the statutory right of employees to be free from employer interference, restraint, and coercion in the conduct of their union activities. For when an employer inquires into such activity, the employees interrogated naturally fear that he not only wants the information for legitimate purposes, but also contemplates some form of reprisal once the information is obtained. Or, as this Court has held, "Interrogation as to union sympathy and affiliation has been held to violate the Act because of

its natural tendency to instill in the minds of employees fear of discrimination on the basis of the information the employer has obtained." *N.L.R.B. v. West Coast Casket Co.*, 205 F. 2d 902, 904. And, "Whether the Company would be disposed to make such use of the [information] is beside the point. As long as the opportunity is present, employees may have a real fear that this would be done." *N.L.R.B. v. Essex Wire Corp. of Calif.*, 245 F. 2d 589, 592 (C.A. 9). In balancing these conflicting interests the Board and the courts have held that the legality of an employer poll depends upon the manner in which the poll is conducted and the circumstances surrounding the taking of the poll.<sup>11</sup>

Thus, in deciding in each case whether a poll to determine union affiliation is lawful or whether it interferes with the employees in the exercise of guaranteed rights, certain factors are relevant. (See *Blue*

---

<sup>11</sup> *Blue Flash Express Co.*, 109 NLRB 591; *N.L.R.B. v. California Compress Co.*, 274 F. 2d 104, 106 (C.A. 9); *Daniel Construction Co. v. N.L.R.B.*, 341 F. 2d 805, 812-813 (C.A. 4), cert. denied, 382 U.S. 831; *N.L.R.B. v. Lexington Chair Co.*, 361 F. 2d 283, 289-290 (C.A. 4); *N.L.R.B. v. McCormick Concrete Co.*, 371 F. 2d 149, 151 (C.A. 4); *N.L.R.B. v. Syracuse Color Press*, 209 F. 2d 596, 599-600 (C.A. 2); *N.L.R.B. v. Camco, Inc.*, 340 F. 2d 803, 805-806 (C.A. 5), cert. denied, 382 U.S. 926; *Bourne v. N.L.R.B.*, 332 F. 2d 47, 48 (C.A. 2); *International Union of Operating Engineers, Local 49 v. N.L.R.B.*, 353 F. 2d 852 (C.A. D.C.). See also Bok, *The Regulation of Campaign Tactics in Representation Elections under the National Labor Relations Act*, 78 Harv. L. Rev. 38, 106-112, November 1964; Seng, *Employer May Violate Section 8(a)(1) in Attempting to Ascertain Union Majority Status*, 41 Notre Dame L. Rev. No. 4 (April 1966).

*Flash Express Co., supra*) : 1) whether the poll serves a legitimate purpose; 2) whether that purpose is conveyed to the employees; 3) whether the employees are given assurances that reprisals will not be taken against them because of their answers; 4) whether the atmosphere in which the poll is taken is free from employer animosity toward the Union.<sup>12</sup> As we show below, substantial evidence on the record as a whole supports the Board's finding that the Company violated Section 8(a)(1) of the Act by polling its employees, although Braden advised the employees that they need not answer.

As noted, Braden first refused the Union's demand for recognition and then, over a period covering the next 10 days, polled his employees to determine their union sympathies. Having already acted upon his alleged doubt of the majority, Braden could have had no legitimate purpose for his conduct. Though the Company alleges that the poll was taken to "confirm" Braden's doubt (R. 28; Tr. 325), confirmation of doubt already acted upon can hardly justify resort to a method of confirmation so likely to interfere with the employees' rights.<sup>13</sup> Nor did the Board here rely

---

<sup>12</sup> Subsequent to its decision in this case, the Board added the requirement that the poll be conducted by a secret ballot in order to minimize its coercive effect on the employees. *Strucknes Construction Co.*, 165 NLRB No. 102, 65 LRRM 1385, 1386.

<sup>13</sup> See, e.g., *P & M Parking System*, 139 NLRB 987, 988; *Henry I. Siegel Co., Inc.*, 143 NLRB 386, 387, fn. 1; *General Electric Co.*, 143 NLRB 926, 929, 931. In all of these cases, polls were found unlawful where they were conducted subse-

solely on the timing of the poll in finding it unlawful. The evidence demonstrates that Braden, after announcing that no reprisals would be taken, actually used the poll as a vehicle for interfering with the employees' free choice. With at least three employees, he attempted to uncover the sources of their dissatisfactions and to correct them. He asked employees Harrington and Bowman whether their wages were satisfactory, and when they responded in the negative, he in effect promised them increases.<sup>14</sup> Then, when

---

quent to the refusal of the Union's bargaining demand. Before the Board, the Company argued that *Cameo Lingerie, Inc.*, 148 NLRB 535, stands for the proposition that the timing of the poll does not control its legality. As the Company noted, the poll in *Cameo*, *supra*, was conducted three months after the Union's demand. However, in *Cameo* the employer was at all times ready to bargain with the union if a card check demonstrated that it represented an uncoerced majority. During the three months, the union and the employer were unable to agree upon a satisfactory method of conducting a card check and the union would not agree to a consent election. It was therefore necessary for the employer to conduct his own poll to determine how to respond to the bargaining demand.

<sup>14</sup> Subsequent to the poll but prior to the election, Braden granted the raises. Though the Company claims that the raises were granted in accord with its policy of giving raises twice a year, it offered no independent evidence, such as payroll records, in support of this assertion. But, even if there were such a policy, Bowman's testimony (Tr. 47-48) that the raise he received as a result of his interview with Braden was twice as large as any he had received in the past, indicates that Braden had an unlawful reason for granting the raise when he did. As the Seventh Circuit said, "[I]nterference is no less interference because it is accomplished through allurements rather than coercion. . . ." *Western Cartridge Co. v. N.L.R.B.*, 134 F. 2d 240, 244.

Agneta responded that he was “happy” with his wages, Braden drew him into an hour-long conversation about his other grievances (Tr. 158, 188). As noted below, p. 17, Agneta was the only employee who admitted joining the Union to secure redress of his grievances and as a result of his disclosures during the poll, he was subjected to a discriminatory change in hours.

The poll was also conducted in a manner designed to heighten the coercive impact.<sup>15</sup> The employees were each summoned to come alone to President Braden’s office, creating an atmosphere of “unnatural formality” (*N.L.R.B. v. M & B Headwear Co.*, 349 F. 2d 170, 172 (C.A. 4)), in sharp contrast with Braden’s usual relations with his employees (R. 28; Tr. 343-346). In some instances, before asking how the employee felt, Braden delivered a lecture on unionism, observed that he “figured his plant should be run the way he saw fit to run it” or remarked that joining a union evidenced disloyalty to the “family” relationship in the plant (Tr. 126, 154).

In addition to these various circumstances, the refusals of three employees to admit that they had signed a card—for example, Eugenia Wanner’s reply “I didn’t—I [am] innocent” (Tr. 210)—further supports the Board’s inference that they were “answering under pressure” (*N.L.R.B. v. Camco, Inc.*, 340 F. 2d 803, 806 (C.A. 5), cert. denied, 362 U.S. 926). Accord: *Bourne v. N.L.R.B.*, 332 F. 2d 47, 48 (C.A. 2); *N.L.R.B. v. Firedoor Corp. of America*, 291 F. 2d

---

<sup>15</sup> As noted above, the Board now requires a secret ballot for such a poll.

328, 331 (C.A. 2). Clearly, then, the poll was conducted neither for a legitimate purpose nor in an acceptable manner and, as found, “although Braden sought to make the interviews appear innocuous by following the formula set forth in *Blue Flash*, they were nevertheless coercive in character and reasonably had a tendency to coerce the employees” (R. 29).

***B. Interference, restraint and coercion during the luncheon campaign***

As set forth in the Statement, *supra*, p. 8, Braden’s election campaign consisted of taking most of the employees to lunch. During these luncheons, Braden admittedly asked the employees “what they thought of the Union, or whether they thought we ought to have a union” (R. 18; Tr. 351. See also Tr. 194). He also used the occasion to discuss a pay raise with Bowman (R. 18; Tr. 49), and to tell Wanner and Metzger that he thought he would establish a pension plan in the near future which would be “as good as they [the Union] has got” (R. 18; Tr. 194-195). Clearly, questioning the employees about their union sympathies at this point in the campaign violated Section 8(a)(1). See, e.g., *N.L.R.B. v. Victory Plating*, 325 F. 2d 92, 93 (C.A. 9); *Bon Hennings Logging Co. v. N.L.R.B.*, 308 F. 2d 548, 552 (C.A. 9); *N.L.R.B. v. U.S. Divers Co.*, 308 F. 2d 899, 905 (C.A. 9). Just as clearly, the promise of a pension plan and the indication to Bowman that he could receive another pay raise were violative of the Act. See, e.g., *N.L.R.B. v. Exchange Parts Co.*, 375 U.S. 405, 409-410.

*C. The discriminatory change in Agneta's hours of employment*

As noted above, Agneta was the only employee who, during the interrogations by Braden, admitted joining the Union because of his grievances against the Company.<sup>16</sup> Agneta was also one of the few full time employees whom Braden did not bother taking to lunch before the election (Tr. 177). Then, shortly before the election when Wells prepared the new work schedule, he told Messinger that "as soon as the election was over with . . . he was going to get rid of Agneta" (R. 19; Tr. 129-130). At the same time he showed the new schedule to Messinger and commented that, "he was sure Agneta wouldn't stay there after he saw the schedule" (R. 19; Tr. 129-130). The reason for Wells' prediction was that the new schedule required Agneta to "double back" one day each week—to work the 3:00 p.m. to 11:00 p.m. shift on Thursday night and then to return to work Friday morning for the 7:00 a.m. to 3:00 p.m. shift after only eight hours off. The schedule was particularly difficult for Agneta because the lack of sufficient rest between shifts made him drowsy and increased the dangers of cutting metal with a power saw (R. 19; Tr. 172). Of course, unlike the mere change in the schedule itself, Wells' comments to Messinger in the midst of the organizing campaign were "likely to be rapidly dissemi-

---

<sup>16</sup> The two other employees who admitted signing applications, Metzger (Tr. 331) and Wanner (Tr. 192), told Braden they had done so only because they intended to leave town in the near future and wanted to be union members so they could get jobs in union printing shops (Tr. 331-332).

nated" (*Irving Air Chute Co. v. N.L.R.B.*, 350 F. 2d 176, 179 (C.A. 2)), and in fact they were. Before Agneta knew of the change, Messinger told him he had better look for another job (Tr. 174), and after the other employees knew of it, Messinger asked if Agneta "would be able to stay there long enough to vote in the election" (Tr. 175). Employee Caseholt told Agneta it was "obvious" that the Company was trying to get him to quit before the election, while other employees said they hoped they were not next (Tr. 175, 177).

Under the circumstances, the statements of Wells constituted, not only threats in themselves, but an "outright confession" of unlawful conduct with respect to the change itself.<sup>17</sup> Nevertheless, the Company representatives asserted before the Board that they changed his shift because they needed Agneta's work at that time and wanted him to work with Jones, a more experienced compositor (R. 30; Tr. 168). Agneta credibly testified, however, that he prepared copy which was not used until two days afterward (Tr. 175, 176) and admittedly no other employee had worked such a schedule (R. 19; Tr. 143, 166). Since Jones did not "double back" and was scheduled for different days off, Jones and Agneta worked together only three days a week following the change (G.C. Exh. 20), and Jones himself regarded the shift as undesirable and not particularly helpful in training an apprentice (R. 30; Tr. 308-9). Thus,

---

<sup>17</sup> *N.L.R.B. v. Globe Products Corp.*, 322 F. 2d 694, 696 (C.A. 4); *N.L.R.B. v. Ferguson*, 257 F. 2d 88, 92 (C.A. 5).

the failure of the Company's asserted reasons for the change to withstand scrutiny is a further indication of its unlawful motive. See, e.g., *N.L.R.B. v. Dant & Russell*, 207 F. 2d 165, 167 (C.A. 9); *N.L.R.B. v. Griggs Equipment, Inc.*, 307 F. 2d 275, 278 (C.A. 5).

The Company also contended that the treatment of Agneta was not made the subject of a timely charge, and consequently was barred from consideration by Section 10(b) of the Act.<sup>18</sup> The unfair labor practices occurred in April and May 1965. It is undisputed that the Union filed an unfair labor practice charge in June 1965 which alleged that the Company, in violation of Section 8(a)(1) of the Act, "has interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act so as to destroy the pre-election majority status of the . . . [Union prior to] May 5, 1965" (R. 3). The complaint issued on that charge alleged the specific instances of interference by Braden and Wells during this period which we discussed, *supra*, pp. 11-16. The charge also alleged that the change in Agneta's hours violated Section 8(a)(3) and (1), but the General Counsel was unable to locate employee Messinger, whose testimony (see *supra*, p. 17) ultimately established the violation with respect to Agneta. Accordingly, the General Counsel approved the withdrawal of that portion of the charge before issuing the complaint (*infra*, p. 20). On the evening before the

---

<sup>18</sup> In relevant part, Section 10(b) provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board. . . ."

hearing, however, Messinger was located and he was called as a witness (Tr. 135). The Trial Examiner granted the General Counsel's motion to amend the complaint to include the change in Agneta's hours as a violation of Section 8(a)(1).

Of course, this is not a case in which the charge required by Section 10(b) was timely filed and then dismissed entirely.<sup>19</sup> Rather, the complaint was issued on a timely charge, and the question is whether the amendment to the complaint was proper. Moreover, this Court has recognized that where specific actions are alleged for the first time by way of amendment to a complaint, Section 10(b) "has been uniformly interpreted to authorize inclusion within the complaint of amended charges—filed after the six months' limitation period—which 'relate back' or 'define more precisely' the charges enumerated within the original and timely charge." *N.L.R.B. v. R. H. Osbrink Mfg. Co.*, 218 F. 2d 341, 345 (C.A. 9).<sup>20</sup> For the rule incorporated in Section 10(b) is "the result of reasoning generally that the charge could relate back because the employer would not be preju-

---

<sup>19</sup> Cf. *N.L.R.B. v. Silver Bakery, Inc.*, 351 F. 2d 37 (C.A. 1); *N.L.R.B. v. Electric Furnace Co.*, 327 F. 2d 373 (C.A. 6).

<sup>20</sup> Accord: *N.L.R.B. v. Burns Det. Agency, Inc.*, 346 F. 2d 897, 899 (C.A. 8); *Texas Industries, Inc. v. N.L.R.B.*, 336 F. 2d 128, 132-133 (C.A. 5); *N.L.R.B. v. Kiekhoefer Corp.*, 292 F. 2d 130, 135 (C.A. 7); *N.L.R.B. v. Palette Stone Corp.*, 283 F. 2d 641, 642 (C.A. 2); *N.L.R.B. v. Raymond Pearson, Inc.*, 243 F. 2d 456, 459 (C.A. 5); *N.L.R.B. v. Local 169, Teamsters*, 228 F. 2d 425, 427-428 (C.A. 3); *N.L.R.B. v. Gaynor News Co.*, 197 F. 2d 719, 721 (C.A. 2); *Cusano v. N.L.R.B.*, 190 F. 2d 898, 903 (C.A. 3).

diced since he would 'retain pertinent records, interrogate witnesses and, in a general way, prepare his defense' to the unfair labor practices complained of in the charge" (*R. H. Osbrink Mfg. Co.*, *supra*, 218 F. 2d at 346 (C.A. 9) quoting *Cusano*, *supra*, 190 F. 2d at 903).

The amendment has merely added an additional allegation of unlawful 8(a)(1) conduct which occurred at the same time, involved the same supervisors, and had the same objective. It was thus an allegation of an unfair labor practice which was a continuation of and "in pursuance of the same objects" as the unfair labor practices already alleged. *National Licorice Co. v. N.L.R.B.*, 309 U.S. 350, 369. Thus, if no reference to Agneta had been made in the initial charge, it is clear that the amendment would have been proper. Moreover, to hold that the complaint may not be enlarged to include related matters *merely* because they were previously withdrawn from the charge, would prejudice a party making a specific charge. The charge could have been couched in the general language of the statute, however; it need not have been precise. *N.L.R.B. v. Fant Milling Co.*, 360 U.S. 301. Had it been so framed, and the evidence of the particular and related violation not specifically mentioned in the complaint, it could unquestionably have been added at the hearing. Accordingly, the issue here is whether the procedure actually misled the Company in preparing its defense. As we show below, it did not.

Although the Company opposed the General Counsel's motion on the ground that the amendment was

time-barred, it did not contend that it was surprised or unable to defend itself against the charge, or even that it needed a continuance to prepare a defense. Indeed, the contrary affirmatively appears. Thus, the relevant document was introduced (G.C. Exh. 20), the Company cross-examined the General Counsel's witnesses, specifically questioning them about their testimony relevant to the incident not mentioned in the original complaint (Tr. 142-143, 144-145, 151, 183-184),<sup>21</sup> presented testimony about the incidents through its own witnesses (Tr. 312-317, 347-348), and presented relevant legal argument in its exceptions and briefs to the Trial Examiner and Board. Clearly, therefore, the matters were fully litigated and the Company was not prejudiced by the absence of specificity as to this particular matter in the complaint or because it was originally withdrawn from the charge. Thus, as the Eighth Circuit recently stated in a related context, the existence of this violation was "a material issue which has been fairly tried by the parties [and] should be decided by the Board. . . ." *American Boiler Manufacturers Ass'n v. N.L.R.B.*, 366 F. 2d 815, 821, and cases there cited.<sup>22</sup>

---

<sup>21</sup> Clearly demonstrating its knowledge of the circumstances surrounding the charge is the fact that the Company tried to force Agneta to admit that his opposition to the change was based on the fact that it interfered with a part-time job (Tr. 184-185).

<sup>22</sup> Accord: *The Frito Co., Western Div. v. N.L.R.B.*, 330 F. 2d 458 (C.A. 9); *N.L.R.B. v. Mackay Radio & Tel. Co.*, 304

**II. Substantial Evidence on the Record as a Whole Supports the Board's Finding That the Company Violated Section 8(a)(5) and (1) of the Act by Refusing to Recognize and Bargain With the Union**

Section 8(a)(5) of the Act requires an employer "to bargain collectively with the representative of his employees, subject to the provisions of Section 9(a)." Section 9(a) provides that "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining." Although Section 9(c)(1) provides the machinery by which the selection of a representative may be determined in a Board-conducted election, it has long been settled that an election is not the only means by which representative status may be established. See *United Mine Workers v. Arkansas Oak Flooring Co.*, 351 U.S. 62, 71-72, and cases cited at n. 8 therein. It is equally well settled that where authorization cards have been signed by a majority of the unit employees, the employer violates Section 8(a)(5) of the Act if he refuses to recognize and bargain with the union unless such refusal is based upon a good faith doubt

---

U.S. 333, 349-350; *American Newspaper Publishers Ass'n. v. N.L.R.B.*, 193 F. 2d 782, 789-800 (C.A. 7), cert. denied, 344 U.S. 812; *N.L.R.B. v. Puerto Rico Rayon Mills, Inc.*, 293 F. 2d 941 (C.A. 1); *Curtiss-Wright Corp. v. N.L.R.B.*, 347 F. 2d 61, 72-74 (C.A. 3); *N.L.R.B. v. Wm. J. Burns Det. Agency*, 346 F. 2d 897, 900-901 (C.A. 8); *N.L.R.B. v. Kiekhaefer Corp.*, 292 F. 2d 130, 135 (C.A. 7); *N.L.R.B. v. Roure-Dupont Mfg. Co.*, 199 F. 2d 631 (C.A. 2).

of the Union's majority status.<sup>23</sup> As the Company apparently concedes, the election did not allow the employees to exercise their free choice, and accordingly the Board looked to the Union's pre-election majority in determining to issue a bargaining order. The Company resists such an order by contending that the Union did not represent a majority of the employees, even at the time of the demand, and that if it did, the Company had a good faith doubt with respect to the Union's status. As we show below, these contentions are without merit.

#### A. *The Union's majority status*

In April 1965, the Company and the Union stipulated that employees in the Company's "composing room department and press-stereotype department" (R. 26; Tr. 17) constituted an appropriate unit for bargaining. Of course, this is merely a restatement, in terms of the Company's organization, of the Union's original demand for recognition in January 15, 1965, which was couched in terms of function—that is, all employees engaged in "mechanical operations from the receipt of copy by the composing room em-

---

<sup>23</sup> *N.L.R.B. v. Security Plating Co., Inc.*, 356 F. 2d 725, 727 (C.A. 9); *N.L.R.B. v. Hyde*, 339 F. 2d 568, 570 (C.A. 9); *Sakrete of Northern California, Inc. v. N.L.R.B.*, 332 F. 2d 902, 908-909 (C.A. 9); cert. denied, 379 U.S. 961, rehearing denied, 380 U.S. 926; *Colson Corp. v. N.L.R.B.*, 347 F. 2d 128 (C.A. 8), cert. denied, 382 U.S. 904; *N.L.R.B. v. Economy Food Center, Inc.*, 333 F. 2d 468, 471-472 (C.A. 7); *Florence Printing Co. v. N.L.R.B.*, 333 F. 2d 289, 291-292 (C.A. 4); *Irving Air Chute Co. v. N.L.R.B.*, 350 F. 2d 176, 182 (C.A. 2).

ployees to the finished product which comes off the press" (G.C. Exh. 22).

As of the time of the demand, that unit included 22 employees, and the Board found that four of these employees were dues-paying members of the Union and nine others had signed applications for membership. Since, as the Company apparently concedes, an "application for union membership implies authority to bargain (*Lebanon Steel Foundry v. N.L.R.B.*, 130 F. 2d 404, 407 (C.A. D.C.), cert. denied, 317 U.S. 659), the Union thus was shown to have the support of a clear majority, and the burden is on the Company to show by "clear and convincing evidence" that this *prima facie* showing of majority status should be rejected. *N.L.R.B. v. Security Plating Co.*, 356 F. 2d 725, 726-727 (C.A. 9); *Amalgamated Clothing Workers (Hamburg Shirt) v. N.L.R.B.*, 371 F. 2d 740, 745 (C.A. D.C.). The Company has not met its burden.

The Company alleges, in effect, that five of the applications were invalid because they were signed too long before the demand. Though the Board's rule is that bargaining authorizations generally will not be counted if more than a year old (*Luckenbach Steamship Co., Inc.*, 12 NLRB 1333; *Surpass Leather Co.*, 21 NLRB 1258), it has also established an exception where the application was signed during the same organizing campaign as that leading to the request to bargain. Thus, where the campaign was interrupted by the filing and processing of unfair labor practice charges, the authorizations will be counted even though more than a year old. *Knickerbocker Plastics*

Co., 104 NLRB 514, enforced 218 F. 2d 917, 921 n. 4 (C.A. 9); *Safeway Stores, Inc.*, 99 NLRB 48, 56. See also, *The Grand Union Co.*, 122 NLRB 589, 590 n. 1. Such a rule is necessary in order to prevent employers from benefitting from their unfair labor practices. Without the exception, employers would find it to their advantage to violate the Act during a campaign and force the union into the difficult position of choosing between filing charges and beginning a new campaign or of continuing to organize in the face of the unlawful activity.

In the instant case, two of the cards which the Company claims were stale were in fact executed within a year of the January 15, 1965 bargaining demand and were properly counted.<sup>24</sup> But in any event, these cards, as well as the others, were properly counted under the exception discussed above since the time lapse between signing and the bargaining demand was due to the Company's unfair labor practices.

The Union's campaign began in 1963. Jocheim signed his application on July 31, 1963. In February 1964, Bowman and Metzger signed their applications. The next month, March 1964, the Union filed unfair labor practice charges against the Company.<sup>25</sup> These resulted in the execution of a formal settlement agreement pursuant to which the Company posted the usual notices (R. 23). The settlement agreement was

---

<sup>24</sup> Michael Bowman (G.C. Exh. 14, executed February 12, 1964) and Richard Metzger (C.A. Exh. 16, executed February 11, 1964).

<sup>25</sup> Board Case No. 21-CA-5854.

approved by the Regional Director in June 1964, and the Union then resumed its organizing activity. In October 1964 an application was obtained from Agneta (G.C. Exh. 15), and on January 14, 1965, applications were submitted by Harrington, Kopp, David Wanner, and Eugenia (Smith) Wanner (G.C. Exhs. 9-12). The next day the Union made its bargaining demand (Tr. 11-12).

The facts demonstrate, then, that the union campaign was interrupted by the filing of charges against the Company and that it was resumed after the settlement agreement was reached.<sup>26</sup> The Board also noted that two of the employees in question continually demonstrated support of the Union. Thus, after

---

<sup>26</sup> Before the Board, the Company argued that the campaign was interrupted, not by the unfair labor practice proceedings, but by the illness of Carl Mason, who was president of the Union, and that there were, therefore, two separate campaigns and the cards should not be counted. The facts, however, do not support such a contention. The dates on the applications indicate that the last cards signed prior to the break in the campaign were executed in February 1964 (G.C. Exh. 14 and 16), one month before the filing of the charge with the Board. Mason did not become ill until July 1964 (Tr. 79). After the settlement agreement was approved, the first application obtained was executed by Agneta on October 1, 1964. Though this was two months after the approval of the settlement agreement it was nonetheless almost one month before Mason returned to work following his illness and three months before he himself again began organizing at the Blade-Tribune (Tr. 79). Thus, since the campaign stopped long before Mason became ill and was resumed before he returned to work, it is apparent that his illness did not control the timing of the campaign. At most, it caused a slowdown in the organizing effort between the settlement agreement and the demand.

the demand, Jocheim took the Union's oath (Bd. Dec. 2; Tr. 90). Also, the day before the demand, Bowman took employees Kopp and Harrington to a union meeting where they both signed applications (Tr. 225, 284), and, while testifying, he did not repudiate his application.<sup>27</sup> Though Metzger did not testify, the Board, in the absence of contrary evidence, was justified in assuming that his application, executed within a year of the demand, was still viable. *N.L.R.B. v. Greenfield Components Corp.*, 317 F. 2d 85, 89 (C.A. 1).

Neal's application was executed in April 1963, and he was then admitted to membership and paid the required fees (Tr. 97-98, 263), although he did not take the Union's oath (Tr. 263). Neal submitted his application in the expectation of working at a printing company in San Diego, California (Tr. 262), but in May 1964 Neal was hired by the Blade-Tribune (Tr. 260-261). Between that date and the hearing he made no effort to withdraw his application even though by his own testimony he was aware that he was a Union member when the demand was made (Tr. 263-264). On February 8, Neal attended a Union meeting, and when Mason saw him, he remembered that when Neal joined the Union he paid the full membership fee rather than the lower "amnesty" fee that the new applicants paid during organizing campaigns. Mason reminded Neal of this and told

---

<sup>27</sup> The failure to repudiate an application while testifying has been held indicative of continued support of the Union. See *N.L.R.B. v. Greenfield Components*, 317 F. 2d 85, 89 (C.A. 1).

that it “wasn’t proper that he should pay more than anyone else” and that he would arrange a refund for the difference (R. 25-26; Tr. 359). Neal agreed. Later, when Mason returned the money to him, Neal merely thanked him for his consideration (Tr. 360). At no time did Neal try to revoke his application or ask that the entire fee be returned.<sup>28</sup> Accordingly, Neal’s authorization, like that of the other four employees in this category was properly counted.

The Company also argues that the Board should not have counted the card of David Wanner, because prior to signing the card he notified the Company of his intention to terminate his employment. In ruling that the card should be counted, the Board applied its judicially approved rules for determining voting eligibility—that is, an employee may vote in an election even though prior to the election he announces his intention to quit. *General Tube Co.*, 141 NLRB 441, 444-445, enforced, *N.L.R.B. v. General Tube Co.*, 331 F. 2d 751 (C.A. 6); *Ely & Walker*, 151 NLRB 636, 654; *Personal Products Corp.*, 114 NLRB 959, 961. The

---

<sup>28</sup> In arguing that Neal tried to withdraw from the Union the Company relies on Neal’s discredited testimony that he told Mason he could not support the Union. Mason credibly testified that Neal did not make such a statement (R. 26; Tr. 360); however, and the Trial Examiner discredited Neal’s version of the conversation. Clearly the matter of crediting and discrediting witnesses rests with the Trial Examiner (*N.L.R.B. v. R. J. Lison Co., Inc.*, — F. 2d —, 65 LRRM 2928, 2930 (C.A. 9, No. 20,879, decided June 26, 1967); *N.L.R.B. v. Ace Comb Co.*, 342 F. 2d 841, 844 (C.A. 8)) and the Company points to nothing which would warrant reversing that finding.

rule is based on the administrative necessity of drawing a line for determining eligibility and upon the assumption that employees often speculate about terminating employment. Thus, although Wanner gave the Company three months' notice in December 1964, he was still in the employ of the Company at the time of the hearing a year later, in December 1965 (Tr. 189). Contrary to the Company's argument, the Board's reliance on the voting eligibility rules was not misplaced. Clearly, if an employee who intends to quit has enough interest in the outcome of the election to express his views by a secret ballot, then he also has enough interest to express them by executing the membership application. This is particularly so where, as here, even if Wanner had quit 3 months after giving notice, he would still have been in the unit for one and a half months after the Company's bargaining obligation arose (Tr. 198).<sup>29</sup>

The Company also argued that Wanner had no intention of designating the Union as a collective bargaining representative. In the first place, it is well settled that, "[A]n employee's thoughts (or afterthoughts) as to why he signed a union card . . . cannot negative the overt action of having signed a card designating the union as bargaining agent." *Joy Silk Mills v. N.L.R.B.*, 185 F. 2d 732, 743 (C.A. D.C.);

---

<sup>29</sup> If, however, the Court finds that Wanner's application should not be counted, then he should also be excluded from the unit for purposes of determining the Union's majority for if he does not have sufficient interest to be counted toward majority, his presence should not hinder the wishes of the remaining employees to be represented.

Accord: *N.L.R.B. v. Hyde*, 339 F. 2d 568, 570 (C.A. 9); *Colson Corp. v. N.L.R.B.*, 347 F. 2d 128, 135 (C.A. 8), cert. denied 382 U.S. 904. Thus even if the Company's contention that Wanner signed only because he wanted to work in a Union shop after he left the Company were supported by evidence, such evidence would not be sufficient to rebut the presumption raised by the signed application. Further, the evidence amply demonstrates that Wanner knew the purpose of the application, for he credibly testified that prior to signing, Union president Mason told him that "this was not only an application for membership, but this also was an authorization for the union to be the—negotiate for me, or to represent me to the Blade-Tribune" (Tr. 205).

The Company's contentions with regard to the last two cards it challenges, Kopp's and Eugenia (Smith) Wanner's, simply raise questions regarding credibility resolutions and the substantiality of the evidence. The Company claims that Mason misrepresented the card's purpose to Kopp at the time Kopp signed, and that Kopp did not understand the purpose of the card. But the Trial Examiner discredited Kopp's testimony that Mason told him the application was only to see how they would do in an election because it was uncorroborated and because he found Kopp to be an unreliable witness (R. 23). Kopp signed the application on January 14, when he attended a Union meeting with Harrington, Bowman and Casebolt, (R. 23; Tr. 284, 281). Kopp's version of what Mason said at the meeting is not corroborated

by either Bowman or Harrington, both of whom testified at the hearing. In fact, Harrington's testimony, corroborating Mason, indicates that there was no misrepresentation, but that the purpose of the application was properly explained (R. 23; Tr. 69, 74-75).<sup>30</sup> Kopp also had a great deal of trouble remembering what had happened during the whole period in question (Tr. 280, 281, 282, 289, 291, 294). Clearly his testimony was too unreliable to support a finding that Mason misrepresented the purpose of the card.

Finally, the Company contends that the evidence does not support the finding that Eugenia Wanner signed her card before the bargaining demand was made. Although she could not recall the date she signed (Tr. 211), her application is dated January 14 (G.C. Exh. 12). Mason testified that he received it that day (R. 16; Tr. 81), and that David Wanner, who signed on the same day (G.C. Exh. 11), brought her to the motel after he had spoken to Mason about joining the Union (Tr. 225). David Wanner testified that Eugenia was present when he signed his application on January 14 (Tr. 201). He was not asked whether Eugenia signed the same day. Clearly, substantial evidence supports the Board's finding that Mrs. Wanner signed the application on January 14, the date appearing thereon, and the card was properly counted.

---

<sup>30</sup> Bowman was not asked about what happened at the meeting and Casebolt did not testify.

*B. The alleged good-faith doubt*

The Company also contended before the Board that even if the Union in fact represented a majority of the employees in an appropriate unit—that is, the unit described in the Union’s demand—the Company doubted both the existence of that majority and appropriateness of the unit sought. As noted above, the Company rejected the Union’s original request out of hand, and *then* questioned employees concerning their support of the Union. The interrogations, however, were designed, not to ascertain the truth of the Union’s claim, but to destroy the Union’s majority, for as we show above, pp. 11-16, they were carried out in a highly coercive manner. Braden also used the period afforded by his rejection of the Union’s claim to determine *why* the employees desired a union, so that he could cure the disaffection of a sufficient number of employees to defeat the Union. Those who simply wanted more money or economic fringes—like a pension plan—were promised those benefits, while Agneta—the one employee revealed as a staunch unionist who looked forward to a rigorous grievance procedure—was driven from the shop following his foreman’s announcement that this would happen to him.

The alleged doubt concerning the unit is equally demonstrative of the Company’s bad faith. The Company first questioned the unit almost a month after the Union’s demand, but when the Union acquiesced in a “traditional composing room unit” and sought a card check, the Company fell back on its contention that the Union had no majority. As this Court has

noted, if the Company actually questioned the unit, "its proper course" was to exclude those persons whom it thought were not properly in the unit and bargain with respect to the others, "not to refuse to bargain altogether." *Sakrete of Northern California, Inc. v. N.L.R.B.*, 332 F. 2d 902, 908 (C.A. 9). Here the Company refused to do so even after the Union *agreed* to a smaller unit. Finally, after its last refusal to bargain, the Company consented to an election in the unit originally requested by the Union. As nothing occurred between the time of the Union's original demand and the signing of the consent agreement to have altered the Company's position, its later agreement to an election in the broader unit is indicative of its lack of a well-founded doubt regarding that unit's appropriateness.<sup>31</sup>

---

<sup>31</sup> Before the Board the Company argued that the *Garden Island Publishing Company* case, 154 NLRB 697, which the Trial Examiner cited in finding that the unit originally requested was appropriate, was not issued until August 1965, after the Company rejected the Union's demand. It argues that prior to the issuance of the decision it did not know that the requested unit was appropriate. As indicated at footnote 6 of the *Garden Island* case, however, the Board has long found such units to be appropriate. See *Worzella Publishing Co.*, 121 NLRB 78.

Thus, the very most that the Company could argue here is that its doubt of the appropriate unit was based upon a mistake of law. It has repeatedly been held, however, that an employer questions the appropriateness of a unit at his peril, for even his good-faith doubt as to its appropriateness—including doubt based on a mistake of law—does not justify his refusal to bargain if the unit was in fact appropriate. See, for example, *N.L.R.B. v. Keystone Floors, Inc.*, 306 F. 2d 560, 563-564 (C.A. 3); *United Aircraft Corp. v. N.L.R.B.*, 333

Accordingly, on this record the Board was clearly justified in finding that the Company's refusal to recognize the Union was "due to a desire to gain time and to take action to dissipate the Union's majority . . . [and hence] constitutes a violation of the duty to bargain set forth in Section 8(a)(5) of the Act" (*Joy Silk Mills v. N.L.R.B.*, 185 F. 2d 732, 741 (C.A. D.C.)). See *Retail Clerks Union, Local No. 1179 (John P. Serpa, Inc.) v. N.L.R.B.*, 376 F. 2d 186 (C.A. 9) and cases cited *supra*, p. 24, n. 23.

### C. The Board properly issued a bargaining order

As shown in the Statement, the Union lost the election following the Company's interference with the employees' free choice. Since the Union had majority support at the time of its original demand, however, the Board ordered the Company to bargain with the Union for a reasonable time. This Court and the other courts of appeals which have passed on the issue have uniformly upheld the Board's power to issue a bargaining order under such circumstances. *Master Transmission Rebuilding Corp. v. N.L.R.B.*, 373 F. 2d 402.<sup>32</sup> For, by ordering the employer to recognize and bargain with the Union in such situations, the

---

F. 2d 819, 822 (C.A. 2), cert. denied, 380 U.S. 910; *Florence Printing Co. v. N.L.R.B.*, 333 F. 2d 289, 291 (C.A. 4); *Northern Virginia Steel Corp. v. N.L.R.B.*, 300 F. 2d 168, 175 (C.A. 4); *N.L.R.B. v. Primrose Supermarket of Salem, Inc.*, 353 F. 2d 675 (C.A. 1), cert. denied, 382 U.S. 830.

<sup>32</sup> *International Union of Electrical, Radio and Machine Workers (S.N.C. Mfg. Co.) v. N.L.R.B.*, 352 F. 2d 361, 363 (C.A. D.C.), cert. denied, 382 U.S. 902; *Amalgamated Cloth-*

Board vindicates the employees' right to be represented by the union they freely designated and "gives to the [u]nion no more than it could fairly claim" was its due when, as the validly designated representative, it sought and was denied recognition. *Irving Air Chute v. N.L.R.B.*, 350 F. 2d at 182.

Although the Company does not contest the Board's general power in this respect, it contended before the Board that the Company's interference in the election was too minor to warrant such an order. We submit that the Board's inference that the Company's unlawful conduct had its natural and intended effect on the Union's support was well within the Board's province as the primary finder of fact. *Radio Officers Union v. N.L.R.B.*, 347 U.S. 17, 48-52. As the Second Circuit said in *N.L.R.B. v. Stow Manufacturing Co.*, 217 F. 2d 900, 905, cert. denied, 348 U.S. 964: "The Board is the tribunal to determine the effect of what was done upon the minds of the employees." Accord: *N.L.R.B. v. Moore's Seafood Products, Inc.*, 369 F. 2d 488, 490 (C.A. 7). The Board was equally justified in finding that this same conduct necessitated a

---

*ing Workers of America (Edro Corp.) v. N.L.R.B.*, 345 F. 2d 264 (C.A. 2); *Irving Air Chute Co. v. N.L.R.B.*, 350 F. 2d 176, 182 (C.A. 2); *Colson Corp. v. N.L.R.B.*, 347 F. 2d 128, 138-139 (C.A. 8), cert. denied, 382 U.S. 904; *N.L.R.B. v. Frank C. Varney Co.*, 359 F. 2d 774 (C.A. 3); *Borden Cabinet Corp. v. N.L.R.B.*, 375 F. 2d 891 (C.A. 7); *Wausau Steel Corp. v. N.L.R.B.*, 377 F. 2d 369, 373 (C.A. 7); *N.L.R.B. v. Southbridge Sheet Metal Works*, — F. 2d — (C.A. 1, No. 6875, 65 LRRM 2916, 2917). See also, *Furr's, Inc. v. N.L.R.B.*, — F. 2d — (C.A. 10, No. 8686, 64 LRRM 2422, 2426).

bargaining order as the only effective remedy. "To devise appropriate remedies and to gauge when the labor atmosphere has been cleared so that a new election may be held are within the Board's discretion." *Wausau Steel Corp. v. N.L.R.B.*, *supra*, 377 F. 2d at 374. See also, *Fibreboard Corp. v. N.L.R.B.*, 379 U.S. 203, 215-216; *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177, 194.

Thus, as summarized, *supra*, p. 33, in connection with the Company's related contention with respect to its alleged good-faith doubt, these violations were repeated over an extended period, involved the Company's highest official, and ranged up to what was, in effect, the discharge of the Union's leading supporter. The circumstances here were thus clearly distinguishable from the facts in the cases cited by the Company, in which the Board either found no bad faith or withheld a bargaining order. For the instant case is far removed from the single 8(a)(1) violation in *Harvard Coated Products, Inc.*, 156 NLRB 162, 163, the threat by a low-level supervisor in *Strydel, Inc.*, 156 NLRB 1185, 1186-1188, or the single 8(a)(1) violation occurring two months before the demand in *Clermont's*, 154 NLRB 1397, 1401.

Furthermore, a bargaining order is particularly appropriate in a case such as this, if only to remedy the Company's unlawful attempts to dissipate the Union's majority. Such an order is prospective and merely restores to the Union its status as majority representative and thus denies to the Company the fruits of its misconduct. *N.L.R.B. v. Delight Bakery*,

*Inc.*, 353 F. 2d 344, 346-347 (C.A. 6); *United Steelworkers of America, AFL-CIO (Northwest Engineering Co.) v. N.L.R.B.*, 377 F. 2d 140 (C.A. D.C.); *Wausau Steel, supra*, 377 F. 2d at 374 *D. H. Holmes Co. v. N.L.R.B.*, 179 F. 2d 876, 879-880 (C.A. 5).<sup>33</sup>

Of course, the Company may later file a petition for an election, and the Board "upon a proper showing, [will] take steps to recognize changed conditions including any shift in the attitude of the employees" (*N.L.R.B. v. Hamilton Co.*, 220 F. 2d 492, 494 (C.A. 10)). Accordingly, the Board's bargaining order may be replaced by a representation election after the Company has bargained with the Union for a reasonable time. Indeed, such a course will allow a fair test of the Company's assertion that the employees have lost interest in collective bargaining. The imposition of any greater limitation—that is, a requirement that the Union first win an election before being given bargaining authority—was summarily rejected by the Supreme Court in *N.L.R.B. v. International Union Progressive Mine Workers of America*, 375 U.S. 396, reversing *per curiam* in this respect 319 F. 2d 428, 437 (C.A. 7).

---

<sup>33</sup> See also, *Local No. 152 v. N.L.R.B.*, 343 F. 2d 307, 309 (C.A. D.C.); *N.L.R.B. v. Caldarera*, 209 F. 2d 265, 268-269 (C.A. 8); *Greystone Knitwear Corp.*, 136 NLRB 573, 575-576, enforced *per curiam*, 311 F. 2d 794 (C.A. 2); *Summit Mining Corp. v. N.L.R.B.*, 260 F. 2d 894, 900 (C.A. 3); *Piasecki Aircraft Corp. v. N.L.R.B.*, 280 F. 2d 575, 591-592 (C.A. 3), cert. denied, 364 U.S. 933; *Editorial "El Imparcial" Inc. v. N.L.R.B.*, 278 F. 2d 184 (C.A. 1).

## CONCLUSION

For the reasons stated, it is respectfully submitted that a decree should issue enforcing the Board's order in full.

ARNOLD ORDMAN,  
*General Counsel,*

DOMINICK L. MANOLI,  
*Associate General Counsel,*

MARCEL MALLET-PREVOST,  
*Assistant General Counsel,*

ELLIOTT MOORE,  
BURTON L. RAIMI,  
*Attorneys,*  
*National Labor Relations Board.*

September 1967.

## CERTIFICATE

The undersigned certifies that he has examined the provisions of Rules 18 and 19 of this Court and in his opinion the tendered brief conforms to all requirements.

---

MARCEL MALLET-PREVOST  
*Assistant General Counsel*  
*National Labor Relations Board*

## APPENDIX A

WESTERN UNION  
TELEGRAMW. P. MARSHALL, *President*

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

1154A PDT OCT 5 65 LC262 OJ204  
O SDA325 PD 2 EXTRA SAN DIEGO CALIF  
5 1137A PDT

NATIONAL LABOR RELATIONS BOARD  
21ST REGION ROOM 600 849 SOUTH BROADWAY  
ATTN MILTON BOYD

LOSA

CASE #21-CA-6808 REGARDING BLADE TRIBUNE PUBLISHING COMPANY, REQUEST WITHDRAWAL OF SECTION EIGHT (A)(E) ALLOCATIONS IN LAST PARAGRAPH OF CHARGE. BUT WITH NO DISAVOWAL OF REMAINING ALLOCATIONS

CARL H MASON PRESIDENT SAN DIEGO TYPOGRAPHICAL UNION #221

Section 8(a)(3) allegations      allegations

#21-CA-6808(A)(3) #221

(46).      Partial

WITHDRAWAL REQUEST APPROVED:  
October 8, 1965

/s/ Ralph E. Kennedy  
RALPH E. KENNEDY, Regional Director

## APPENDIX B

## RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

## UNFAIR LABOR PRACTICES

Sec. 8 (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

\* \* \* \*

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

\* \* \* \*

## REPRESENTATIVES AND ELECTIONS

Sec. 9 (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages,

hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

### Section 10

\* \* \* \*

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion

at any time prior to the issuance of an order based thereon.

\* \* \* \*

(e) The Board shall have power to petition any court of appeals of the United States, . . . within any circuit . . . wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to

## APPENDIX C

## INDEX TO REPORTER'S TRANSCRIPT

(Numbers are to pages of reporter's transcript)

Board Case No. 21-CA-6808

## GENERAL COUNSEL'S EXHIBITS

| <u>No.</u> | <u>Identified</u> | <u>Offered</u> | <u>Received In<br/>Evidence</u> |
|------------|-------------------|----------------|---------------------------------|
| 1          | 7                 | 7              | 8                               |
| 2          | 13                | 13             | 13                              |
| 3          | 14                | 14             | 15                              |
| 4          | 14                | 14             | 15                              |
| 5          | 14- 15            | 14-15          | 15                              |
| 6          | 15                | 15             | 15                              |
| 7          | 18                | 18             | 21                              |
| 8          | 23                | 23             | 24                              |
| 9          | 71                | 73             | 73-74                           |
| 10         | 80                | 81             | 82-83                           |
| 11         | 80                | 81             | 82-83                           |
| 12         | 80                | 81             | 82-83                           |
| 13         | 80                | 81             | 82-83                           |
| 14         | 83                | 83             | 83                              |
| 15         | 83                | 83             | 84                              |
| 16         | 83                | 83             | 84                              |
| 17         | 89                | 89             | 89-90                           |
| 18         | 90                | 90             | 91                              |
| 19         | 92                | 92             | 92-93                           |
| 20         | 163-164           | 170            | 171                             |
| 22         | 228- 9            | 228- 9         | 229                             |
| 23         | 363               | 363            | 364                             |

## RESPONDENT'S EXHIBITS

| <u>No.</u> | <u>Identified</u> | <u>Offered</u> | <u>Received In<br/>Evidence</u> |
|------------|-------------------|----------------|---------------------------------|
| 1          | 239               | 239            | 240                             |
| 2          | 342               | 342            | 343                             |
| 3          | 342               | 342            | 343                             |
| 4          | 342               | 342            | 343                             |
| 5          | 371               | 371            | 372                             |

## GENERAL COUNSEL'S WITNESSES

| <u>Witnesses</u>                         | <u>Direct</u> | <u>Cross</u> | <u>Redirect</u> | <u>Recross</u> |
|--|---------------|--------------|-----------------|----------------|
| Thomas W. Braden                         | 8             |              |                 |                |
| Michael E. Bowman                        | 42            | 50           | 53              |                |
| Patrick Dion Harrington                  | 55            | 62           | 71              | 74             |
| Carl H. Mason                            | 79            |              |                 |                |
| F. Lorimer Ratliff                       | 86            | 97           | 102             | 104            |
| Verle L. Messinger                       | 122           | 135          | 143             | 144            |
| Edward Agneta                            | 151           | 180          | 185             | 188            |
| David Wanner                             | 189           | 197          | 199             | 201            |
| Eugenia G. Wanner                        | 208           | 212          |                 |                |
| Richard C. Hareld                        | 215           | 220          | 221             |                |
| Carl H. Mason<br>(Recalled)              | 223           | 237          |                 |                |
| Carl H. Mason<br>(Recalled for Rebuttal) |               |              | 358             | 365            |

## RESPONDENT'S WITNESSES

| <u>Witnesses</u>               | <u>Direct</u> | <u>Cross</u> | <u>Redirect</u> | <u>Recross</u> |
|--------------------------------|---------------|--------------|-----------------|----------------|
| Barber W. Renner               | 252           | 256          |                 |                |
| Keith B. Neal                  | 260           | 264          | 265             |                |
| Aialaisa Salani                | 268           | 271          | 273             | 273            |
| Ronald A. Kopp                 | 278           | 281          |                 |                |
| Paul Jones                     | 298           | 309          | 310             |                |
| Donald Wells                   | 311           | 320          | 321             |                |
| Thomas W. Braden<br>(Recalled) | 322           | 348          |                 |                |
| Kenneth N. Prarie              | 370           | 372          | 378             |                |

## MOTIONS AND STIPULATIONS

| <u>Type</u>                         | <u>Page</u> | <u>Made</u> | <u>Ruling</u>        | <u>Page</u> | <u>Ruling</u> |
|-------------------------------------|-------------|-------------|----------------------|-------------|---------------|
| Stipulation to Election<br>Results  | 20          |             | G.C. agrees to stip. | 21          |               |
| Stipulation of Employees<br>in Unit | 22-23       |             | All parties agree    | 24          |               |